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Human rights situation in Palestine and other occupied Arab territories

Additional information pertaining to the comprehensive review on the status of recommendations addressed to all parties since 2009 with regard to the Occupied Palestinian Territory, including East Jerusalem*, **

Summary

The present document is an addendum to the report of the United Nations High Commissioner for Human Rights on "Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: Comprehensive review on the status of recommendations addressed to all parties since 2009", submitted pursuant to Human Rights Council resolution 31/35. It describes the methodology applied to assess the implementation of these recommendations through the analysis of some examples.

* The information contained in this document should be read in conjunction with the report of the United Nations High Commissioner for Human Rights on 'Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: Comprehensive review on the status of recommendations addressed to all parties since 2009' (A/HRC/35/19).

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I. Introduction

1. This addendum complements the report of the United Nations High Commissioner for Human Rights on "Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: Comprehensive review on the status of recommendations addressed to all parties since 2009."[1] It includes recommendations made by the relevant bodies from 2009 up until the end of 2016.

2. As noted in the oral update of the High Commissioner to the Human Rights Council on 20 March 2017, this addendum aims to describe how the status of implementation of the recommendations was determined, through an analysis of selected key recommendations.

II. Assessment methodology

3. In line with the mandate provided by resolution 31/35, the assessment focused on the recommendations of the human rights mechanisms and Offices enumerated in paragraph eight of the report. Thus, technical and substantive reports by bodies not mentioned by the resolution (for instance the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories), or those not containing recommendations (such as the two Boards of Inquiry established by the United Nations Secretary-General following the escalation in hostilities in Gaza in 2009 and 2014) are not reflected in the review. They are nevertheless referenced as sources to determine the level of implementation of some recommendations.[2]

4. The recommendations under review mainly emanate from reports to the Human Rights Council. However, reports to the General Assembly by entities specified in paragraph eight of resolution 31/35 are included, such as the reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. Similarly, as reports of the Secretary-General to the Human Rights Council typically stipulate that they are to be read in conjunction with reports to the General Assembly, they were also taken into consideration in the review as appropriate. This approach meets the requirement of comprehensiveness of the review stipulated by resolution 31/35.

5. The assessment of the implementation of each recommendation is based on the most recent information available up until the first quarter of 2017, drawn from United Nations reports, official domestic sources, documentation and publications by civil society and other credible sources. Furthermore, the Office of the United Nations High Commissioner for Human Rights (OHCHR) requested inputs from the Governments of Israel and Palestine, and made an open call online for submissions on measures taken by relevant duty-bearers towards accountability.[3]

6. As indicated in the report, the status of implementation of recommendations has been classified in five categories: "implemented", "partially implemented", "unimplemented", "closed or no longer applicable", and "insufficient information".[4] The status of implementation of each recommendation has been assessed individually, taking into account the actions (legal or operational) and their impact on the fulfilment of the relevant right. Due consideration was given as to whether a recommendation seeks fulfilment of structural measures, process actions, a particular outcome or end objective, or several or all of those elements.[5]

7. This addendum is composed of a series of illustrative examples which show the analytical process that has led to the determination of the status of implementation for each

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[1] A/HRC/35/19.

[2] See Annex of A/HRC/35/19 for a full list of reports included in the review.

[3] See www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/CallforSubmissionsHRC3135.aspx.

[4] The meaning of each category is explained in detail in paragraph 9 of the main report.

[5] See www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf pp. 33-38.

recommendation. One to two recommendations in each thematic area have been selected as primary examples. Each example includes a detailed description of the information taken into account when assessing implementation, as well as the reasoning for determining whether the recommendation was implemented, not implemented, or partially implemented. Each of these examples demonstrates the process that was undertaken for the assessment of all of the 773 recommendations.

III. Thematic areas

8. The review covered 929 recommendations,[6] out of which 773 were found to fall within the mandated scope of the report,[7] and which were grouped under seven thematic areas:

- accountability and access to justice
- international engagement
- arrest and detention
- settlements
- freedom of movement
- other civil and political rights, and
- economic, social and cultural rights.

9. The tables below provide an overview of the implementation of recommendations along those themes. Some recommendations relate both to the Occupied Palestinian Territory and to the territory of Israel and, in some instances, to the occupied Syrian Golan. In such cases, the analysis has been limited to their implementation in the Occupied Palestinian Territory.

Table 1
Analysis of recommendations by thematic area and implementation

	Implemented	*Partially implemented*	*Not implemented*	*Insufficient information*	*No longer relevant*	*Total*
Accountability and access to justice	3 (1%)	23 (9%)	217 (85%)	8 (3%)	2 (1%)	253
International engagement	11 (8%)	25 (19%)	71 (54%)	19 (14%)	6 (5%)	132
Right to liberty and treatment in detention	0	7 (7%)	98 (92%)	1 (1%)	0	106
Settlements	0	3 (3%)	87 (94%)	3 (3%)	0	93
Freedom of movement	0	1 (1%)	77 (97%)	1 (1%)	0	79
Other civil and political rights	0	1 (2%)	48 (86%)	7 (13%)	0	56
Economic, social and cultural rights	0	5 (9%)	39 (72%)	10 (19%)	0	54
Excluded						156
Total						929

[6] Universal Periodic Review recommendations are not included.

[7] The review is limited to recommendations applicable to the Occupied Palestinian Territory; 156 recommendations were therefore excluded.

Table 2
Analysis of implementation by party

	Implemented	*Partially implemented*	*Not implemented*	*Insufficient information*	*No longer relevant*	*Total*
Israel	2 (0.4%)	20 (3.6%)	499 (90.7%)	28 (5.1%)	1 (0.2%)	550 (100%)
Palestinian authority	1 (1.3%)	12 (16.0%)	55 (73.3%)	7 (9.3%)	0 (0.0%)	75 (100%)
United Nations and the International Community	10 (12.0%)	25 (30.1%)	36 (43.4%)	6 (7.2%)	6 (7.2%)	83 (100%)

A. Accountability and access to justice

10. Twenty-seven per cent of the recommendations (253) cover accountability and access to justice, the thematic area with a higher volume of recommendations. Recurrent issues addressed to both parties relate to compliance with international standards of investigation in the context of alleged violations of international human rights law and international humanitarian law; respect for principles of international humanitarian law and international human rights law during and outside of active hostilities; and access to justice, fair trial, due process and remedy. This subject also includes recommendations to Israel on excessive use of force, punitive demolitions and settler violence, and recommendations to Palestinian duty-bearers on attacks, so-called "honour-killings" and the death penalty, issues typically raised in conjunction with calls for justice. Two recommendations assessed below exemplify how recommendations in this category were assessed, including the type of information considered and rationale for the conclusions that were drawn.

Table 3
Overview of recommendations related to accountability and access to justice

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Accountability and investigations for violations of international humanitarian law and international human right law	154	57.5%	16.6%
Compliance with international humanitarian law and international human right law	97	36.2%	10.4%
Death penalty	4	1.5%	0.4%
Cooperation with international mechanisms	4	1.5%	0.4%
Other	9	3.4%	1.0%
Total	268		

11. In his 2013 report on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, the Secretary-General recommended that "The Government of Israel must take all necessary measures to ensure the accountability of its security forces. It should conduct investigations into all credible allegations of violations of international humanitarian law and human rights law. Investigations must be independent, transparent, impartial, thorough, prompt, and effective. Redress for victims must be ensured."[8] The various elements are analyzed below in sequence.

12. The recommendation requested Israel to take "all necessary measures to ensure the accountability". However, in August 2016, the Secretary-General noted how "Various independent committees of experts as well as international, Israeli and Palestinian human rights organizations have [...] extensively documented the flaws in Israel's accountability mechanisms in addressing the killing, injury, torture and ill-treatment and the destruction of

[8] A/68/502 para. 48.

Palestinian property."[9] He specifically cited the main issues, indicating that "Shortcomings in the Israeli justice system [...] include physical, financial, legal and procedural barriers that restrict the ability of Palestinians, particularly those living in Gaza, to access justice."[10]

13. Contrary to the request to conduct investigations into all credible allegations, the Secretary-General noted that "Significantly, findings suggest there to be a consistent failure by the Military Advocate-General [...] and the Attorney General to open investigations in all cases where prima facie evidence, including eye-witness testimony, medical reports or audio-visual materials indicate that actions by State agents were unlawful."[11]

14. Concerning independence and impartiality, both the 2014 Gaza Commission of Inquiry[12] and the 2010-11 Committee of Experts[13] noted that "a central failing of the investigation system stems from the dual responsibilities of the MAG, both as the legal advisor to the Chief of General Staff and other military authorities and as the supervisor of disciplinary law and of criminal investigations in the military."[14] These bodies also recognized that the civilian judicial oversight by the Attorney General and the Supreme Court over decisions of the Military Advocate-General was a safeguard to preserve independence.[15] In practice, however, the Commission of Inquiry found that the High Court generally shied away from intervening in policies set by the Military Advocate-General and had "rarely overturned a decision by the Military Advocate-General."[16] In 2016, the Secretary-General similarly reported to the General Assembly that "/.../ the oversight is limited and often fails to review the legality of the policies themselves or the orders issued at the highest levels."[17] The Committee of Experts found that the Military Advocate-General was not an appropriate mechanism for the review of policy decisions.

15. The following paragraphs provide examples of the assessments carried out to determine whether investigations are "independent, transparent, impartial, thorough, prompt, and effective" as requested by the recommendation

16. The judicial process and conviction by a military tribunal of Sergeant El-Or Azaria was subject to political pressure. He was convicted for the manslaughter of Abdel Fattah al-Sharif – a Palestinian who was incapacitated after being shot for allegedly stabbing an Israeli soldier. His killing was documented in a video circulated by B'Tselem. Media coverage, replete with high-level political figures commenting on the case, illustrated the pressure on the justice system. Prime Minister Benjamin Netanyahu, who reportedly indicated his support for the soldier to be pardoned, declared: "We have one army which is the foundation of our existence. The IDF soldiers are the sons and daughters of all of us, and they must remain above all disagreements."[18] Following the many high-level political statements supporting Sergeant Azaria, the Minister of Defence called "all ministers to show restraint", warning that "slogans" were "self-serving, and not for the benefit of Azaria."[19]

17. Regarding transparency, the five updates published about preliminary examinations by the Israeli Fact-finding Assessment Mechanism and investigations are encouraging but insufficient. As observed by the 2014 Gaza Commission of Inquiry: "Information currently made available is welcome, but is insufficient to allow for effective public and international scrutiny."[20] The The Commission further underscored the requirement of transparency,

[9] A/71/364 para. 39.
[10] A/71/364 para. 40.
[11] A/71/364 para. 40.
[12] A/HRC/RES/S-21/1.
[13] A/HRC/RES/13/9.
[14] A/HRC/29/CRP.4 para. 619.
[15] A/HRC/29/CRP.4 para. 622, A/HRC/16/14 para. 41.
[16] A/HRC/29/CRP.4 para. 623.
[17] A/71/364, para. 50.
[18] E.g. www.jpost.com/Israel-News/Politics-And-Diplomacy/Netanyahu-calls-to-pardon-Elor-Azaria-after-Hebron-manslaughter-conviction-477459, www.theguardian.com/world/2017/jan/04/israeli-soldier-guilty-manslaughter-shooting-palestinian-elor-azaria-abdel-fattah-al-sharif.
[19] See www.timesofisrael.com/liberman-ministers-should-keep-quiet-about-azaria-pardon/
[20] A/HRC/29/CRP.4, para. 629.

indicating that "while there may be limitations on publishing certain types of information, a minimum level of transparency is required from the point of view of assisting victims' quest for the truth and their right to effective remedies."[21]

18. With regard to promptness of investigations, in 2011 the Committee of Experts expressed serious concerns and noted that more than a third of the incidents reviewed relating to the 2008-2009 Gaza conflict remained unresolved or with an unclear status. In 2016, the situation had not improved: "Two years after the [2014] escalation of hostilities in Gaza, justice remains elusive. Less than nine per cent of referred incidents of alleged violations of international humanitarian law and international human rights law, including allegations of war crimes, have led to a criminal investigation…"[22]

19. As for thoroughness and effectiveness, Israel has outlined challenges in conducting investigations, particularly into acts committed by the IDF in the context of hostilities in Gaza. These include lack of ready access to the scene, destruction of evidence during hostilities, and lack of witness testimonies. According to Israel, "investigations can take significant time and even where an indication of criminal conduct exists, they can still fail to obtain evidence sufficient to warrant prosecution."[23]

20. The thoroughness and effectiveness of Israeli investigations of violations against Palestinians have been challenged by Israeli NGOs. Yesh Din found that "in practice soldiers enjoy near absolute impunity for offenses they commit against Palestinian residents of the West Bank."[24] B'Tselem made similar observations in 2016. The organization reviewed its work vis-à-vis the Military Advocate-General Corps and the Military Police Investigation Unit over the course of 25 years and decided to stop referring complaints to the military due to recurring failure to ensure accountability in cases in which soldiers had harmed Palestinians.[25] The Secretary-General observed that "a consistent failure by the Military Advocate-General… and the Attorney General to open investigations in all cases where prima facie evidence, including eye-witness testimony, medical reports or audiovisual materials indicate that actions by State agents were unlawful. When investigations are opened, they frequently fail to meet human rights standards, and only a small number of alleged perpetrators, mainly at the rank-and-file level, are brought to justice, facing mainly lenient indictments and sentence."[26]

21. Based on assessments like the examples provided above, the report concludes that not all necessary measures to ensure accountability for violations of international humanitarian and human rights law by Israeli security forces have been taken. On the whole, investigations have failed to meet international standards of independence, transparency, impartiality, thoroughness, promptness, and effectiveness. The analysis shows that investigations have not been opened in all cases of *prima facie* evidence of wrongdoing, and that redress is not ensured if access to justice by Palestinian victims is hampered. The recommendation is therefore assessed as "not implemented".

22. In his 2013 report on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, the Secretary-General recommended to the Gaza authorities and Palestinian armed groups that "Accountability must be ensured for violations of international humanitarian law and human rights law, in particular the killing of civilians, the indiscriminate firing of rockets towards Israel and summary executions, committed by the de facto authorities and armed groups in Gaza. Investigations must be independent, transparent, impartial, thorough, prompt, and effective. Redress for victims must be ensured."[27]

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[21] A/HRC/29/CRP.4, para. 217.
[22] A/HRC/34/36, para. 45.
[23] See http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx, para. 59.
[24] Yesh Din, Investigation Policy, 11 April 2016
[25] See *"The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism*, www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf
[26] A/68/502 para. 40.
[27] A/68/502 para. 52.

23. The recommendation specifically mentions the indiscriminate firing of rockets and summary executions as violations of international humanitarian law and international human rights law that should be investigated. Even though the recommendation requires accountability and redress for those violations and does not explicitly call for a halt to their occurrence, it is relevant to note that both types of violations have continued to take place: indiscriminate firing of rockets by armed groups continues to be reported, the latest (without casualties) in January and February 2017,[28] and instances of killing of suspected collaborators by Hamas were documented during the 2014 escalation of hostilities.

24. Regarding investigations into such violations, in his 2013 report on Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, the Secretary-General noted that "In respect of the de facto authorities in Gaza, it appears that more than seven months after the end of the escalation in hostilities, no measures have been taken to investigate credible allegations of violations of international law committed by the de facto authorities or armed groups in Gaza, or to provide an effective remedy to victims of the hostilities of November 2012."[29] This situation does not appear to have changed, as noted by the High Commissioner for Human Rights in his report to the Human Rights Council presented in March 2017: "impunity is […] a major concern with regard to actions by Palestinian authorities […] in Gaza. In Gaza, there is little information available about any investigation at all into violations of international law."[30]

25. In this regard, the Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 is pertinent. It noted the little information available regarding steps taken by the State of Palestine and the authorities in Gaza "to conduct investigations into alleged serious violations of international *humanitarian* and gross violations of international human rights law."[31] In July 2016, Amnesty International reported that "in May 2015, the Hamas authorities denied involvement in the summary killings of Palestinians documented by Amnesty International, but said the Attorney General and Ministry of Interior in Gaza were investigating and would publish their findings." Amnesty International also reported that the Gaza authorities "have not released further information and their investigations are not independent, as the judiciary and Ministry of Interior in Gaza are directed and staffed by Hamas members, some of them closely linked to Hamas' military wing. There are no indications that they are investigating the rocket and mortar attacks which killed Israeli and Palestinian civilians."[32]

26. Given the apparent absence of any investigations, the second element of the recommendation, requiring redress for victims, also remains unimplemented.

27. Based on the above, the recommendation is therefore assessed as "not implemented".

B. International engagement

28. The review identified 141 recommendations pertaining to international engagement (15 per cent of the total), some of which call for cooperation of all parties with international human rights mechanisms, and some for the implementation of and compliance with international law in general. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review.

[28] See www.haaretz.com/israel-news/1.766915.

[29] A/68/502 para. 33.

[30] A/HRC/34/36, para. 79.

[31] A/HRC/29/CRP.4 para. 653.

[32] See www.amnesty.org/en/documents/mde15/4190/2016/en/.

Table 4

Overview of recommendations related to international engagement

	Number of recommendations	Percentage in this thematic area	Percentage of all recommendations
General implementation of international standards, recommendations	83	49.1%	7.0%
Cooperation with international mechanisms	10	7.1%	1.1%
Actions conducive to peace	37	26.2%	4.0%
Other	29	20.6%	3.1%
Total	141		

29. An illustrative example in this thematic area is the analysis of a recommendation addressed to the international community. In 2009, the report presented by multiple mandate holders to the Human Rights Council, submitted pursuant to resolution S-9/1 on the Occupied Palestinian Territory, recommended that: "The international community should actively promote the implementation of the decisions, resolutions and recommendations of the Security Council, the International Court of Justice and the United Nations human rights mechanisms, including treaty bodies and special procedures. In this respect, the mandate-holders recall the obligation of States to cooperate to bring to an end through lawful means to any serious breach of an obligation arising from a peremptory norm of general international law. They also recall the obligation of all States to ensure respect for the provisions of international humanitarian law."[32]

30. Since 2009, several bodies of the United Nations system have regularly reminded, encouraged, and prompted all parties to cease violations and abide by their obligations under international human rights law and international humanitarian law. Notably, the Secretary-General, in his latest report on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, noted that "[c]hronic violations of international human rights law and international humanitarian law by all parties have persisted,"[33] and stated that "All parties must respect international law and comply with their obligations or responsibilities under international human rights law."[34] In December 2016, the Security Council reiterated the call on "both parties to act on the basis of international law, including international humanitarian law [...]."[35]

31. Member States have actively engaged with Israel and the State of Palestine to promote the implementation of the recommendation and to seek a resolution to the conflict. The most recent efforts included the peace negotiations between Israel and Palestine, facilitated by the United States, which began in July 2013 and collapsed in April 2014, as well as the French-sponsored Conference for peace in the Middle East that took place in Paris on 15 January 2017.

32. The international community has actively promoted the implementation of decisions, resolutions and recommendations of the United Nations, and there have been attempts by states to cooperate. This has not had the effect of ending grave violations of international law by parties to the conflict. As a result, this particular recommendation has been assessed as "partially implemented".

33. A second illustrative analysis relates to a recommendation addressed to both Israel and the State of Palestine and is examined individually for each duty-bearer. In 2014, the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 called "upon Israelis and Palestinians to demonstrate political leadership by both refraining from and taking active steps to prevent statements

[32] A/HRC/10/22/105 para 105, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/135/43/PDF/G0913543.pdf?OpenElement

[33] A/HRC/34/38, para. 72.

[34] A/HRC/34/38, para. 76.

[35] S/RES/2334(2016).

that dehumanize the other side, incite hatred, and only serve to perpetuate a culture of violence.[37] This recommendation requires demonstrated political leadership in two ways: a) abstaining from making statements that incite to hate and dehumanize the other side; and b) taking action that prevents such statements.

18. In relation to Israel, statements such as those described in the recommendation were made throughout the period covered by this review and increased during times of escalation of violence and hostilities. In November 2014, the Internal Security Minister, Yitzhak Aharonovitch, following an incident in which a Palestinian man rammed a vehicle into pedestrians at a light rail stop in Jerusalem, stated: "A terrorist who attacks civilians deserves to be killed."[38] Derogatory statements were made by Naftali Bennet, then Minister of Economy, and Ayelet Shaked, the current minister of Justice.[39] In line with the recommendation's requirement to take active steps to prevent dehumanization, in July 2015, Prime Minister Netanyahu condemned an arson attack in Douma, in which Israeli settlers killed three Palestinians and gravely injured a five-year-old boy, calling it a "horrific, heinous terrorist act."[40] However, in February 2016, when announcing the plan to surround Israel with fences, the Prime Minister said: "In our neighbourhood, we need to protect ourselves from wild beasts,"[41] which clearly dehumanized Palestinians and could incite hatred and violence. While the representatives of some organizations[42] and the authors of the book Torat Hamelech were arrested for incitement,[43] these actions did not result in any indictment. When assessing the above as a whole, despite some positive statements, the balance of the actions are not adequate to qualify as refraining from and taking active steps to prevent statements that dehumanize and incite violence. There is no evidence of systematic condemnation of statements made that would incite violence, and as well no indictments have followed the few arrests made on these grounds. This recommendation is considered "not implemented".

19. Several reports have documented the Palestinian authorities' persistent use of statements like those described in the recommendation. In its report of June 2016, the Middle East Quartet noted that "Palestinians who commit terrorist attacks are often glorified publicly as 'heroic martyrs.'"[44] It further noted that "Hamas and other radical factions [...] use media outlets to glorify terrorism and openly call for violence against Jews, including instructing viewers on how to carry out stabbings."[45] For instance, in a statement issued in February 2017, Moshir El Masry, a member of the legislative committee of Hamas' bureau, urged all imprisoned Palestinians to "initiate a stabbing intifada behind bars targeting Israeli soldiers."[46] The Middle East Quartet also noted that "Some members of Fatah have publicly supported attacks and their perpetrators, as well as encouraged violent confrontation."[47] The Quarter also observed that although the Palestinian Authority leadership had "made statements expressing opposition to violence against civilians, [...] regrettably, [...] Palestinian leaders have not consistently and clearly condemned specific terrorist attacks."[48] No actions have been documented indicating efforts

[37] A/HRC/34/38/Rev.1, para. 678.

[38] See www.timesofisrael.com/internal-security-minister-calls-for-demolishing-terrorists-homes/.

[39] See www.jpost.com/Diplomacy-and-Politics/Bennett-under-fire-for-comments-about-killing-Arabs-321687; www.telegraph.co.uk/news/worldnews/middleeast/israel/11599012/New-Israeli-justice-minister-notorious-for-anti-Palestinian-rhetoric-given-bodyguard-after-Nazi-death-threats.html.

[40] See www.timesofisrael.com/netanyahu-condemns-terrible-heinous-terror-attack-on-palestinians/.

[41] See www.theguardian.com/world/2016/feb/10/israel-plans-fence-around-coast-to-protect-it-from-wild-beasts.

[42] See www.haaretz.com/israel-news/.premium-1.632270.

[43] See www.jpost.com/Israel-News/High-Court-No-basis-to-indict-Torat-Hamelech-authors-for-incitement-436705.

[44] See www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf.

[45] *Ibid.*

[46] See www.mekomit.net/news/101194-الحاق-الخبر-المخصصة-للعمل-ت-م-حماس/.

[47] *Ibid.*

[48] *Ibid.*

to prevent such statements. The recommendation is therefore considered as "not implemented".

86. In December 2016, the Security Council called on both parties to "refrain from provocative actions, incitement and inflammatory rhetoric, with the aim, inter alia, of de-escalating the situation on the ground, rebuilding trust and confidence, […] and creating the conditions necessary for promoting peace."[49] Based on this as well as the above paragraphs, the overall recommendation has therefore been assessed as "not implemented" by any of the parties.

C. Arrest and detention

87. The review identified 106 recommendations that concern arrest and detention (11 per cent of the total number of recommendations). Two recommendations have been selected as illustrative examples of recommendations in this category, discussed in detail below. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review.

Table 9

Overview of recommendations related to conditions of detention

	Number of recommendations	Percentage in the thematic area	Percentage of all recommendations
Treatment of children	52	49.1%	5.4%
Treatment of adults	27	25.5%	2.7%
Administrative detention	15	14.2%	1.6%
Judicial guarantees	12	11.3%	1.3%
Total	106		

88. In June 2016, following the review of the report submitted by Israel, the Committee against Torture, "Recalling its previous recommendation (CAT/C/ISR/CO/4, para. 28) […] call[ed] upon the State party to redouble its efforts with a view to: (a) Ensuring that the deprivation of liberty of minors, irrespective of the charges brought against them, is a last resort, limited to the shortest possible period, and that it is reviewed daily with a view to eliminating it."[50]

89. Regarding the first part of the recommendation, the Secretary-General noted in May 2016 that the large number of arrests of Palestinian children by Israel seemed incompatible with its use as a last resort.[51] According to official data provided to Israeli NGOs by the Israeli Prison Service, at the end of August 2016, 319 Palestinian minors were being held in Israeli prisons, 89 of whom were in administrative detention. Out of the 319 minors, 168 were being held in pre-trial detention until the conclusion of the judicial proceedings. Israel has since stopped providing such data to civil society organizations despite requests sent based on the 1998 Freedom of Information Law.[52] According to UNICEF data, the arrest of Palestinian children has continued to increase,[53] as has the use of administrative detention.[54]

90. As Israeli authorities have continued to detain children as a regular practice, this element of the recommendation is assessed as "not implemented".

91. The second part of the recommendation requires that Israel ensure that child detention undergoes judicial review on a daily basis with a view to eliminating it. Military Order 1711 (which came into force in April 2013 and reduced the maximum period of

[49] S/RES/2334(2016).
[50] CAT/C/ISR/CO/5, para. 19.
[51] A/71/86, para. 24.
[52] See www.militarycourtwatch.org/page.php?id=1Y1Bh3pvc6a190220AwFbv7lxv2.
[53] A/HRC/34/36, para. 25.
[54] A/HRC/34/36, para. 26.

detention without judicial review for children between 12 and 15 years old but did not modify the period for children aged between 16 and 17 years old) still allows for the detention of Palestinian children for several days before their presentation to a military court judge: 24 hours for children aged 12-13 (plus additional 24 hours for urgent investigations), 48 hours for children aged 14 -15 (plus an additional 48 hours for urgent investigations) and 96 hours for children aged 16-17 years old (as for adults).[55] Therefore, this part of the recommendation, and taken together with the above information – the recommendation as a whole – is assessed as "not implemented".

42. In March 2015, the High Commissioner recommended that authorities in Gaza "take all the necessary measures to ensure that the rights of persons deprived of liberty are respected, including by ensuring effective, independent, impartial, thorough and transparent investigations into allegations of torture and ill-treatment, and to ensure that perpetrators are brought to justice and that victims have access to an effective remedy."[56]

43. Civil society organizations and the United Nations have continued to document cases of torture by Gaza authorities.[57] In January 2016, the High Commissioner, based on information collected by OHCHR in Gaza, noted violations of due process, as well as torture and ill-treatment during interrogation, and arbitrary arrests, mostly by local police forces, but also corrections officers and members of the internal security apparatus. Some arbitrary arrests have led to prolonged incommunicado detention. OHCHR also received allegations of excessive use of force upon arrest, denial of the right to remain silent, and to have legal representation and contact with family. Political opponents of Hamas, journalists and human rights defenders are often among the victims.[58]

44. Authorities in Gaza have failed to implement the recommendation of the High Commissioner to conduct "effective, independent, impartial, thorough and transparent investigations" of allegations of torture and ill-treatment. In 2012, Human Rights Watch raised concerns of Hamas' failure to "investigate and prosecute abusive security officials" suspected of torture.[59] It documented the case of Mr. Mahmoud Eshtewi, a member of the military wing of Hamas, who was allegedly killed in custody in 2016 after being repeatedly subjected to torture during interrogations. Authorities refused to provide any information on the case to Human Rights Watch, and the family's request for an autopsy was rejected.[60]

45. The 2016-2017 report of Amnesty International on the human rights situation in the State of Palestine[61] stated that "[t]orture and other ill-treatment of detainees remained common and was committed with impunity by Palestinian police and other security forces in the West Bank, and Hamas police and other security forces in Gaza". According to the report, authorities in the West Bank and in Gaza failed to investigate torture allegations and to hold perpetrators accountable. The recommendation is therefore assessed as "not implemented".

D. Settlements

46. The review identified 93 recommendations related to Israeli settlements in the West Bank, including East Jerusalem. Most (81) were addressed to Israel, none of which has been implemented. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review.

[55] See www.unicef.org/oPt/Children_in_Israeli_Military_Detention_-_Observations_and_Recommendations_-_Bulletin_No._2_-_February_2015.pdf, p.1.
[56] A/HRC/28/80, para. 72.b.
[57] See www.hrw.org/news/2016/02/15/palestine-torture-death-hamas-detainee.
[58] A/HRC/31/40, paras. 69-78.
[59] See www.hrw.org/news/2012/10/03/gaza-arbitrary-arrests-torture-unfair-trials.
[60] See www.hrw.org/news/2016/02/15/palestine-torture-death-hamas-detainee.
[61] See www.amnesty.org/en/countries/middle-east-and-north-africa/palestine-state-of/report-palestine-state-of/.

Table 6
Overview of recommendations related to settlements

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Settlement expansion	20	21.9%	2.2%
Zoning and building permits	18	19.4%	1.9%
Forced transfer	20	21.9%	2.2%
Demolitions, displacement	16	17.2%	1.7%
Businesses engagement in settlements	15	16.1%	1.6%
National resources exploitation	1	1.1%	0.1%
Human rights violations linked to settlements	3	3.2%	0.3%
Total	93		

47. In January 2016, the Secretary-General made a recommendation that encompasses and combines multiple aspects related to the presence of settlements in the Occupied Palestinian Territory: "The Israeli authorities must halt and reverse the creation and expansion of settlements in the Occupied Palestinian Territory and in the occupied Syrian Golan.[62] In addition, Israel must immediately cease using land control mechanisms aimed at expanding the area effectively occupied by settlements, such as the designation of firing zones, archaeological parks and agricultural land. Israel must also immediately cease the exploitation of natural resources from these territories."[63] A range of evidence was considered when assessing the implementation of this broad recommendation. The below is illustrative of the information taken into account when assessing recommendations related to settlements more generally.

48. In January 2017, the Government of Israel announced the construction of over 6,000 housing units in existing settlements. On 6 February 2017, the Knesset passed the "Settlement Regularization Bill", retroactively legalizing Israeli settlements built on private Palestinian land. Furthermore, in March 2017, the Government announced the establishment of a new settlement in the West Bank - the first in over 20 years.

49. The recommendation calls for the cessation of land control mechanisms aimed at expanding the area occupied by settlements, including "firing zones", archaeological parks and agricultural land. In March 2016, Israel declared "state lands" over 200 hectares of land south of Jericho.[64] This process is a crucial part of Israel's strategy aimed at expanding the land under the control of settlers, including for agricultural use.[65] On 15 February 2017, the Israeli army demolished 43 Palestinian structures in Ein Ar Rashash, Ramallah governorate, located in an area designated by the Israeli military as a "firing zone".[66]

50. Finally, the recommendation includes the cessation of the exploitation of natural resources in the Occupied Palestinian Territory. A United Nations Conference on Trade and Development report of September 2016 noted that Israel was extracting water above the level determined in the Oslo II Accord, and had confiscated 82% of the groundwater in the Occupied Palestinian Territory for its use in Israel and in settlements, while Palestinians needed to import over half of the water they use.[67]

[62] The review of the implementation regarding the Occupied Syrian Golan is outside the scope of this report.
[63] A/HRC/31/43, para. 67.
[64] A/HRC/34/39, para. 17.
[65] A/HRC/31/43, para. 3.
[66] See www.ochaopt.org/content/palestinian-bedouin-community-almost-totally-demolished
[67] UNCTAD/APP/2016/1[a], para. 34.

51. Twenty of the 93 settlement-related recommendations call on Israel to cease the forced transfer and evictions in the Occupied Palestinian Territory, as well as actions that can lead to such situations. In November 2014 the United Nations Human Rights Committee recommended that Israel: "Desist from any actions that may facilitate or result in forcible transfer and forced evictions, particularly of the Bedouin communities in the central West Bank, including the eastern Jerusalem periphery, and forced displacement and dispossession of Bedouins residing in the Negev".[68]

52. In January 2016, the Secretary-General expressed concern that Israel continued planning the relocation of entire communities and demolitions of homes of Palestinian Bedouins and herder populations.[69] Israel has continued implementing policies resulting in the displacement of Palestinians, including Bedouin communities, in East Jerusalem. As documented by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), during the first two months of 2017, in East Jerusalem, Israel demolished 24 structures in 18 Bedouin communities in the area designated for the E1 settlement plan and the expansion of the Ma'ale Adumim settlement, causing the displacement of 133 people, half of whom were children.[70] Between 1 January and 6 April 2017, OCHA documented that Israeli authorities had demolished a biweekly average of 29 Palestinian-owned structures, causing the displacement of a biweekly average of 58 Palestinians.[71] Considering all of the above information next to the elements of the recommendation, the recommendation of the Secretary-General referred to above has been assessed as "not implemented".

E. Freedom of movement

53. Among the 79 recommendations related to the right to freedom of movement, 76 are addressed to Israel, two to all parties to the conflict and one to the Human Rights Council. Twenty-eight recommendations call for the blockade of Gaza to be lifted, to allow the free movement of people and goods in and out of Gaza, to facilitate reconstruction, and to address the humanitarian and human rights impact of blockade. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review.

Table 7
Implementation of recommendations related to freedom of movement

	Number of recommendations	*Percentage on this thematic area*	*Percentage of all recommendations*
Blockade	29	36.7%	5.1%
Wall	5	6.3%	0.9%
Freedom of movement between Gaza and West Bank	20	25.3%	3.5%
Restrictions impacting humanitarian aid	14	17.7%	2.5%
Restrictions impacting economic development	5	6.3%	0.9%
Enforcement of access restrictions	4	5.1%	0.4%
Residency rights	2	2.5%	0.2%
Total	79		

[68] CCPR/C/ISR/CO/4, para. 9. The review of the implementation regarding the Negev desert falls outside the territorial scope of this report and will not be assessed.

[69] A/HRC/31/43, para. 44.

[70] See www.ochaopt.org/content/tightening-coercive-environment-bedouin-communities-around-ma-ale-adumim-settlement.

[71] See www.ochaopt.org/content/protection-civilians-report-21-march-3-april-2017.

54. A 2013 recommendation from the Committee on the Rights of the Child demonstrates the process and information used in considering implementation of recommendations in this category. The Committee recommended that Israel: "Cease the construction of the Wall in the Occupied Palestinian Territory and fully lift the Gaza blockade, and urgently allow entry of all construction materials necessary for Palestinian families to rebuild homes and civilian infrastructures so as to ensure respect for children's right to housing, education, health, water and sanitation as recommended notably by the Committee on the Elimination of Racial Discrimination (CERD/C/ISR/CO/14-16, para. 26) and in line with Israel's Manual on the Laws of War (1998) which prohibits the conduct of a scorched earth policy "with a view to inflicting starvation or suffering on the civilian population."[72]

55. In July 2014, OCHA reported that 62 per cent of the planned wall had been constructed, including 200 additional kilometres since the Advisory Opinion had been issued.[73] In August 2015, the construction of the wall resumed in Bethlehem after the High Court of Justice, in April 2015, requested the State of Israel to consider alternative routes to ensure access of Palestinians between Bethlehem, Beit Jala and a Cremisan monastery and convent.[74]

56. Regarding the recommendation to fully lift the blockade, OCHA has continued to document[75] how the blockade undermines Gaza's economy, resulting in high levels of unemployment, food insecurity and aid dependency. The blockade has continued to negatively impact the quality of health, education, and water and sanitation services available in Gaza. One third of the applications for exit permits for medical treatment outside Gaza submitted in 2016 were rejected or delayed. The volume of imports allowed into Gaza falls short of current needs due to population growth and the devastation from recurrent hostilities. The limited access to construction materials delays the construction, repair and upgrade of homes and infrastructure, and prolongs the displacement of those who have lost their homes. Also, the production of food inside Gaza is affected by the prohibition of access to areas within 300 metres of the perimeter fence (making access to a wide area contiguous to those 300 metres unsafe), which prevents and discourages agricultural activities. Moreover, fishermen are allowed to access less than a third of the fishing areas allocated under the Oslo Accords. Consequently, by mid-2016, the unemployment rate was almost 42 per cent, and stood at 60 per cent among youth and 65 per cent among women; 47 per cent of households in Gaza suffered from moderate or severe food insecurity; and over 70 per cent of the population was receiving some form of international aid, mainly food assistance.

57. The third element of the recommendation demands that Israel urgently allow the entry of all construction materials necessary for private homes and civilian infrastructures. According to OCHA, the partial easing of some of the restrictions since the establishment of the Gaza Reconstruction Mechanism in 2014 has facilitated the entry of some restricted items, but recent import reductions have put a strain on the GRM's effectiveness and hampered reconstruction efforts. For example, between 3 April and 22 May 2016, Israel did not allow the import of cement to Gaza by the private sector due to allegations that this material was being used to build a tunnel to Israel. While the import of cement has since resumed, the number of trucks has been limited to 90 per day – compared to 120 before April 2016. This generated a backlog demand of 577,000 tons of cement in December 2016, and OCHA calculated it could take nine years for the supply to catch up with the increasing demand. Only four per cent of the cement needed in December 2016 to construct and repair houses for the 33,000 families who were authorized to purchase cement through the Gaza Reconstruction Mechanism was available. Consequently, 10,248 families (about 53,300 people) remained displaced.[76]

[72] CRC/C/ISR/CO/2-4, para. 26.c.

[73] See www.ochaopt.org/content/spotlight-10-years-international-court-justice-icj-advisory-opinion

[74] See www.ochaopt.org/content/barrier-construction-bethlehem-resumes.

[75] See www.ochaopt.org/content/gaza-strip-humanitarian-impact-blockade-november-2016.

[76] See www.ochaopt.org/content/intensified-restrictions-entry-building-materials-delay-completion-housing-projects-gaza.

58. Due to the insufficient easing of the import restrictions and its limited impact, the scale of the ongoing humanitarian crisis and the failure to lift the blockade, the recommendation is assessed as "not implemented".

59. In 2009, multiple special procedures mandate-holders asked all parties to "Enable the import of reconstruction materials needed to build or repair vital infrastructure and housing, and facilitate the full reintegration in dignity and security of the recently displaced (without prejudice to the right of return of Palestinian refugees)."[77] The recommendation addresses all parties; its implementation by the Israeli and Gaza authorities is separately assessed.

60. Israel's failure to comply with the recommendations and enable the import of sufficient reconstruction materials and its humanitarian impact has been illustrated in previous paragraphs. OCHA has documented how the blockade continues to hinder reconstruction and recovery efforts in Gaza: "[l]ongstanding access restrictions imposed by Israel have undermined Gaza's economy [...] Restrictions on the import of goods treated by Israel as "dual use" items have impacted on the quality of basic services and impede efforts to address housing needs."[78]

61. OCHA documented that, beginning on 26 March 2017, Gaza authorities imposed access restrictions which have exacerbated the humanitarian concerns and delayed reconstruction efforts. Restrictions to the entry and exit of persons were established at the Arba Arba checkpoint, which controls access to the Erez Crossing between Gaza and Israel, further reducing the number of Palestinians in Gaza permitted to leave through Erez due to restrictions by Israel, and delaying the implementation of large infrastructure projects due to cancellation of visits by international consultants.[79]

62. As a result of the difficulties affecting reconstruction, 75,000 persons displaced by the 2014 escalation remain in this situation,[80] preventing their "full reintegration in dignity and security". As the above information indicates that none of the parties has complied with the recommendation, it has been determined as "not implemented".

F. Civil and political rights

63. Fifty-eight recommendations (six per cent of the total) are related to other civil and political rights, including 29 that refer to the freedoms of expression, assembly and association. Among those 29, 17 are addressed to Palestinian authorities and 12 to Israel. The following table provides an overview of the distribution of the issues covered by these recommendations and the relevant percentages.

Table 8
Overview of recommendations related to other civil and political rights

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Freedom of expression, assembly and association	34	58.6%	3.7%
Freedom of thought, conscience and religion	10	17.2%	1.1%
Right to protection of family	12	20.7%	1.3%
Palestinian political unity	2	3.4%	0.2%
Total	58		

[77] A/HRC/10/22 105 para. 103(f).
[78] See www.ochaopt.org/content/gaza-strip-humanitarian-impact-blockade-november-2016.
[79] See www.ochaopt.org/content/continuing-access-restrictions-de-facto-authorities-gaza-add-humanitarian-concerns.
[80] See http://gaza.ochaopt.org/2016/04/gaza-internally-displaced-persons-april-2016/.

64. Eight of the recommendations mention religious rights, both in terms of access to religious sites and addressing the right to bury relatives in accordance with religious customs. In June 2016, the Committee against Torture recommended that Israel "take the measures necessary to return the bodies of the Palestinians that have not yet been returned to their relatives as soon as possible so they can be buried in accordance with their traditions and religious customs, and to avoid that similar situations are repeated in the future."[81] The paragraphs that follow illustrate the process that led to assessments of implementation or non-implementation in this category of recommendations.

65. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories expressed concern, in August 2016, that although "many of the bodies" had been returned to the families, many continued to be held by Israel "in poor and inhumane conditions", and were consequently often "disfigured, sometimes beyond recognition."[82] The Secretary-General expressed concern about extensive delays to return the bodies "with punitive intent against the families of the deceased", despite a commitment from the Government of Israel to release them "within a short space of time."[83]

66. Moreover, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories expressed its concern that the then newly appointed Defence Minister, Avigdor Lieberman, had reaffirmed the practice of keeping the bodies of Palestinians killed while conducting attacks against Israelis and burying them in a special cemetery in Israel.[84] According to Israeli media, in December 2016, the Government of Israel agreed to withhold the bodies of Palestinians killed while carrying out attacks if the deceased belonged to Hamas and return them to their families if no links with Hamas were suspected.[85] On 1 January 2017, the Israeli Prime Minister's Office issued a statement saying that the cabinet had "discussed a permanent policy" and decided that the bodies of "Hamas terrorists killed during attacks" would not be returned to their families but "buried".[86]

67. Therefore, although the bodies of some Palestinians deceased in Israel while carrying out attacks were returned to their families (which could arguably be seen as partially implementing the first element of the recommendation), this occurred after unjustified delays with a punitive intention, contrary to the requirement of a speedy return made in the recommendation ("as soon as possible"). Regarding the second part of the recommendation (avoiding the reoccurrence of the unjustified withholding of the bodies), the publicly-stated "permanent policy" to selectively keep the bodies of persons with links to Hamas shows the intent to continue disregarding its content. The recommendation is therefore assessed as "not implemented".

68. In 2011, the High Commissioner recommended that the Palestinian Authority should "[e]nsure that civil society organizations, human rights defenders and journalists can carry out their work in an open, safe and secure operating environment, especially in relation to the rights to freedom of association and expression, as well as other applicable international standards."[87] In August 2016, Human Rights Watch documented multiple cases where authorities in the West Bank and in Gaza "arrest[ed], abus[ed], and criminally charg[ed] journalists and activists" who were critical of authorities. Human rights violations included torture, and, according to Human Rights Watch, were part of a long-standing pattern of violations of the right to freedom of speech.[88]

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[81] CAT/C/ISR/CO/5, para. 43.

[82] A/71/352, para. 46-47.

[83] See the case of Ewisat v. The Israel Police et al. (High Court of Justice 2882/16) on 5 May 2016, A/71/364, para. 25.

[84] A/71/352, para. 48, www.timesofisrael.com/liberman-orders-moratorium-on-returning-attackers-bodies/, and www.jpost.com/Israel-News/Politics-And-Diplomacy/Liberman-halts-the-return-of-terrorist-bodies-456369.

[85] See www.haaretz.com/israel-news/.premium-1.757959, www.israelnationalnews.com/News/News.aspx/221496.

[86] See www.pmo.gov.il/MediaCenter/Spokesman/Pages/spokeCabinet010117.aspx.

[87] A/HRC/16/71, para. 60(b).

[88] See www.hrw.org/news/2016/08/29/palestine-crackdown-journalists-activists.

69. In March 2017, the Secretary-General also expressed his concern that "Throughout the Occupied Palestinian Territory, social media is monitored, and journalists and activists are harassed, arrested, detained and, in some cases, subjected to ill-treatment or torture. Authorities in both the West Bank and Gaza have also restricted peaceful assemblies. These practices denote the rise of a repressive environment and promote self-censorship among the Palestinian population."[89] The recommendation has thus been assessed as "not implemented".

G. Economic, social and cultural rights

70. Seven per cent of the recommendations (63) are dedicated to economic, social and cultural rights: 18 to the right to education, 16 to the right to health, seven to the right to water and sanitation, 14 to the right to an adequate standard of living, and two to the right to development. Most recommendations were addressed to Israel (49), 10 to Palestinian authorities and four to the international community. The following table provides an overview of the distribution of the issues covered by these recommendations and the percentage within this review. Two recommendations have been selected to illustrate the methodology followed to assess their implementation.

Table 9
Overview of recommendations related to economic, social and cultural rights

	Number of recommendations	*Percentage in this thematic area*	*Percentage of all recommendations*
Right to health	16	25.4%	[illegible]
Right to education	18	28.6%	1.9%
Right to water	7	11.1%	0.8%
Adequate standard of living, food, clothing, housing	14	22.2%	1.5%
Development	8	12.7%	0.9%
Total	63		

71. The report of the High Commissioner of March 2013 on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 recommended that "Israel must ensure that all wounded persons receive the required medical attention with the least possible delay. To this effect, IDF should issue clear instructions that the wounded must receive immediate attention, without discrimination, and staff must refrain from obstructing the work of medical personnel, including Palestinian ambulance crews."[90]

72. Throughout 2016, OHCHR documented and raised concerns that Palestinians wounded by Israeli security forces were not provided with medical assistance, or that such assistance was significantly delayed, including by blocking Palestinian ambulances and first responders. For example, "witnesses informed OHCHR that an Israeli medic arrived 12 minutes after Hadeel al-Hashlamoun was shot, but that she was not given first aid. Local media reports said Palestinian medics present at the checkpoint were prevented from reaching Ms. Al-Hashlamoun, and she was left bleeding for about 30 minutes."[91] In another example, "regarding Basil Basim Sidir, two witnesses interviewed by OHCHR stated that, although a medical team had reached the spot within a few minutes, the Israeli security forces did not allow them to attend to the victim for around 15 minutes."[92]

73. No information is available indicating that instructions have been issued by the Israeli security forces to its personnel to allow prompt medical attention to wounded

[89] A/HRC/34/38, para. 70.
[90] A/HRC/22/35 para. 71.
[91] A/HRC/31/40 para. 16.
[92] Ibid.

Palestinians. Cases documented between October 2015 and January 2017 by Physicians for Human Rights include instances of Palestinian medical personnel blocked from treating wounded persons accused of conducting an attack. Incidents of tear gas, tear gas canisters and rubber bullets thrown or shot at ambulances were also reported.[93] Eight of these cases documented by Physicians for Human Rights were submitted to the investigative authorities for addressing complaints regarding delays in the evacuation of the wounded. At the time of writing, these complaints were closed or no answer had been received.

74. The main indicator to assess the implementation of this recommendation is the continued reoccurrence of documented cases of Palestinian ambulances and first responders delayed and, in some instances, blocked entirely. The lack of clear instructions issued to the Israeli security forces to facilitate prompt medical assistance, and the closure or lack of timely response to the complaints filed constitutes an additional indicator that the recommendation was "not implemented".

75. In 2009, the report by multiple mandate holders[94] on the Human Rights situation in Palestine Other Occupied Arab Territories recommended that parties to the conflict "Enable the immediate resumption of regular educational activities, make schools zones of peace and ensure that schools are protected from military attacks and from seizure or use as centres for recruitment."[95]

76. The recommendation is addressed to both parties to the conflict in the 2009 escalation of hostilities in Gaza: Israel and Hamas. Following the ceasefire of 18 January 2009, and the resumption of education activities, the first part of the recommendation calling for the resumption of educational activities could arguably be considered as "fully implemented". However, for the purpose of this analysis, it is necessary to note that after 2009, two additional escalations of hostilities took place between Israel and Hamas in 2012 and 2014. During the last escalation, between 8 July and 26 August 2014, "at least 262 schools were damaged in Israeli air strikes. Three public schools were completely destroyed and at least 23 were severely damaged. In addition, 274 kindergartens were damaged."[96] Furthermore, "of the 83 school buildings of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) that were damaged owing to Israeli airstrikes and shelling nearby, 7 being used as shelters were hit either directly or by air strikes or shelling, resulting in the death of at least 42 persons, including 16 children, and in the injury of about 230 persons."[97] It appears that schools were not considered as zones of peace, and were not protected from attacks by the Israeli security forces.

77. In relation to Hamas, the Secretary-General noted that "during its routine inspections, UNRWA discovered that weapons or weapons components had been placed by Palestinian armed elements in three vacant UNRWA schools in Gaza."[98] On 10 November 2014, the Secretary-General decided to establish a United Nations Headquarters Board of Inquiry into 10 incidents which caused death or injury and damage, or during which weaponry was found at United Nations facilities during the conflict. On 27 April 2015, the Secretary-General released a summary of the Board's findings in a letter to the Security Council. He deplored that at least 44 Palestinians were killed and at least 227 injured as a result of Israeli attacks at United Nations premises that were being used as emergency shelters. The Board concluded that the three schools at which weaponry belonging to Palestinian armed groups was found were empty at the time, not being used as shelters.[99]

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[93] See www.phr.org.il/en/complaints-concerning-delay-evacuation-wounded-pales, http://cdn2.phr.org.il/wp-content/uploads/2016/12/PHRI-Submission-SR-OPT-7-November-2016-UPDATED.pdf.

[94] A/HRC/10/22 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/135/43/PDF/G0913543.pdf?OpenElement

[95] A/HRC/10/22 para 103 (b).

[96] S/2015/409 para. 98.

[97] S/2015/409 para. 99.

[98] A/69/926 S/2015/409 para. 102.

[99] Letter dated 27 April 2015 from the Secretary-General addressed to the President of the Security Council, S/2015/286.

78. Given the documented level of destruction of education infrastructure during the 2014 escalation of hostilities and the verified use of schools to store weapons, it is considered that this recommendation is "not implemented" by any of the parties to the conflict.